IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE HARUN-UL-RASHID

FRIDAY, THE 3RD AUGUST 2007 / 12TH SRAVANA 1929

MFA.No. 391 of 2000()

OPMV.2947/1995 of ADDL.MOTOR ACCIDENT CLAIMS TRIBUNAL, ERNAKULAM
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APPELLANT/PETITIONER:

P.C.LUKOSE,AGED 59 YEARS, S/O.SRI.CHACKO, POOZHIKUNNEL HOUSE, PERUMPAIDAD P.O.,KOTTAYAM.

BY ADV. SRI.ANIL S.RAJ
SMTK.N.RAJANI

RESPONDENTS/RESPONDENTS:

1.N.JAYADEEP,S/O.NARASIMHAM,48/897,3RD CROSS ROAD, KEERTHI NAGAR, ELAMAKKARA, KOCHIN - 26.

2.BIJU,S/O.K.K.SASI, H.NO.48/897, 3RD CROSS ROAD, KEERTHI NAGAR, ELAMAKKARA, COCHIN-26. (DELETED)

2ND RESPONDENT IS DELETED AS PER ORDER IN I.A.1625/207 IN M.F.A.391/2000 DATED 3.8.2007.

3.UNITED INDIA INSURANCE CO. LTD., COCHIN-31.

BY ADV. SRI.MATHEWS JACOB (SR),SC INSURANCE

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 03/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B.KOSHY & V.GIRI, JJ.

M.F.A.NO.391 OF 2000

Dated 3rd August, 2007

JUDGMENT

Koshy, J.

Appellant petitioner met with an accident, while he was travelling in a tourist car bearing registration No.KL-7/G 7161 driven by the 2nd respondent. The bus hit against the rear side of the K.S.R.T.C. bus and he suffered serious injuries. He claimed compensation of Rs.1,12,750/-. Tribunal awarded only Rs.37,000/-. The tribunal found that accident occurred due to the negligence of the 2nd respondent and the offending vehicle was insured by the 3rd respondent, Insurance company. Only quantum of compensation is disputed in this appeal.

2. Appellant was 54 years at the time of accident. Tribunal fixed Rs.1,500/- as the monthly income. According to the claimant, he was a Real Estate business man and his monthly income was Rs.4,000/- per

month. But no evidence was produced to show his income. Accident occurred in 1995. Since no particulars are produced, we are not changing the income assessed by the tribunal. With regard to the injuries and percentage of difficulties, tribunal considered the evidence as follows:

> "The next question is regarding the quantum. The applicant sustained the following injuries as revealed from Ext.A6, the copy of the wound certificate is sued from the District Hospital, Kollam and also Exts.A7 and A8 discharge certificate and discharge summary respectively issued from the Medical Trust Hospital, Kochi.
>
> (1) Lacerated wound of 1 cm x 1 cm skin deep over the forehead obliquely over the medical end of left eye bow.
>
> (2) Lacerated wound of 1 cm x 1 cm skin deep over the upper 1/3rd of left shin of tibia.
>
> (3) Multiple abrasions over the right knee with dislocation of right patella. X-Ray of right knee showed fracture of inferior pole of patella and fracture of 3rd metacarpal undisplaced.
>
> He was first admitted in the District Hospital, Kollam and then taken to Medical Trust Hospital, Kochi. He was admitted there on 14.8.1995 and was discharged on 21.8.1995. Ext.A9 series are the medical bills worth

> Rs.10,519.65. Ext.A10 is the certificate of disability issued by the Physiatrist of General Hospital, Ernakulam to the effect that the applicant has limitation of flexion of right knee, wasting of right quadriceps, difficulty in squatting, recurrent pain and swelling of right knee with osteoarthritis, difficulty in uphill and downhill walk and has a permanent partial physical disability of 25%."

PW2, Doctor who issued disability certificate was examined. However, tribunal did not award any compensation on scientific basis and only Rs.5,000/- was awarded as compensation for loss of earning power and disability. We are of the opinion that tribunal went wrong in not accepting the basis of medical certificate. Compensation is calculated even taking the least multiplier as 11 and compensation payable will be Rs.1,500 x 12 x 11 x $^{25}/_{100}$ = 49,500/-. After deducting Rs.5,000/- balance compensation payable for disability and loss of earning power will be Rs.44,500/- over and above the decreed amount by the Tribunal. The above amount should be deposited by the 3rd respondent, Insurance company with 8% interest from the

date of application till deposit and on deposit of the same, appellant is free to withdraw the same. With the above observations, this appeal is partly allowed.

J.B.KOSHY, JUDGE

V.GIRI, JUDGE

prp

J.B.KOSHY & V.GIRI, JJ.

M.F.A.NO.391 OF 2000

JUDGMENT

Dated 3rd August, 2007